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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Robert S. Brayton et al.

Serial No.: 10/037,683

Filed: January 4, 2002

Title: Method to Serve Real-Time Data in
Embedded Web Server

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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§ Group Art Unit: 2178
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§ Examiner: Basehoar, Adam L.
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§ Atty. Docket: 200302369-1
§ COMP:0270/SWA

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May 25, 2007

Date


Tim R. Swanson

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Appellant respectfully submits this Pre-Appeal Brief Request for Review, which is filed in accordance with the OG Notice of July 12, 2005. As required by this Notice, the present Request is being filed concurrently with a Notice of Appeal.

Summary of the Rejections

In the Final Office Action, the Examiner rejected claims 29-33, 35-44 and 46-47 as being unpatentable over Pettersen (U.S. Patent No. 6,826,594, hereinafter "Pettersen") in view of Chen et al. (U.S. Patent No. 6,021,437, hereinafter "Chen"), claim 34 as obvious over Pettersen in view of Chen and Thurston (U.S. Patent No. 6,865,716, hereinafter "Thurston"), claim 45 as obvious over Pettersen in view of Chen and Lynch et al. (U.S. Patent No. 6,823,319, hereinafter "Lynch"), and claim 48 as obvious over Pettersen in view of Chen and Ellison et al. (U.S. Patent No. 6,487,547, hereinafter "Ellison"). Appellants respectfully traverse these rejections.

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10/037,683

Pre-Appeal Brief Request for Review

Flaws in the Rejection of Independent Claim 29

The Examiner's rejections are flawed for a number of reasons, some of which are exemplified by flaws in the rejection of claim 29. In claim 29, the same server both serves a web page and receives a request for an object file. Specifically, claim 29 recites "serving a web page to a requesting computer from a managed server," and "receiving a request from the requesting computer to the managed server for the object file." (Emphasis added.) As explained below, the cited references do not teach or suggest, alone or in hypothetical combination, a managed server that both serves a web page comprising a source call to an object file and receives a request for the object file.

In sharp contrast to claim 29, the Pettersen reference teaches a remote content management system in which a web site and advertisements to be inserted into the web site are requested from different servers. *See* Pettersen, col. 6, ll. 8-21, and Fig. 11. Specifically, the Pettersen reference teaches serving a website with the following steps:

- 1) an affiliate web server 791 serves a web page 793 to a user system 760 (Pettersen, Fig. 11 and column 6, lines 39-41);
- 2) the user system 760 then requests advertisements from a web server 781 for a content serving website 780 (Pettersen, Fig. 11 and column 7, lines 13-16); and
- 3) the user system 760 then inserts the advertisements into the web page 793 (Pettersen, Fig. 11 and column 7, lines 34-37).

Significantly, the affiliate web server 791 is not the same server as the web server 781, so the request to the web server 781 for advertisements is not a request to the affiliate web server 791. In other words, the user system 760 does not request the advertisements from the server 791 that provides the web site. *See id.* at col. 7, ll. 5-15. That is, different servers provide the web site and the inserted advertisement data. Thus, the Pettersen reference does not teach or suggest a managed server that both serves a web page comprising a source call to an object file and receives a request for the object file.

10/037,683
Pre-Appeal Brief Request for Review

The Chen reference does not teach or suggest this feature, either. Indeed, the Chen reference does not even teach an object file, let alone a managed server that receives a request for an object file. The Chen reference teaches intelligent agents that fully construct a web page on a server before serving the web page to a client. *See* Chen, col. 3, ll. 31-32. Thus, because the web page is received by the client in its entirety, these web pages do not prompt a client computer to request additional data, such as an object file, after receipt of the web pages. Accordingly, the Chen reference does not teach receiving a request to a managed server for an object file.

In view of these deficiencies, among others, the Pettersen reference and the Chen reference, taken alone or in hypothetical combination, cannot render obvious claim 29 or the claims that depend therefrom.

The Examiner has Failed to Address the Flaws in the Rejection of Claim 29

In an attempt to overcome this deficiency, the Examiner made two arguments: 1) that Pettersen teaches a single-server embodiment that serves both the web page and dynamic data, and 2) that Pettersen can be modified in light of Chen to reach the subject matter of claim 29. Final Office Action, page 11. Both of these arguments are flawed.

Contrary to the first argument, Pettersen does not teach a single-server embodiment. Indeed, as explained on page 14 of the Response filed on January 19, 2007, the Pettersen reference teaches away from such an embodiment. Pettersen emphasizes both the importance of storing the advertisement data on a remote server and the problems associated with placing the advertisement data on the affiliate's web server. *See* Pettersen, col. 2, ll. 32-40. That is, the Pettersen reference teaches away from acquiring the primary web page and the data inserted into the web page from the same server.

To support the first argument, that Pettersen teaches a single-server embodiment, the Examiner cited column 8, line 43-column 9, line 31 of Pettersen (hereinafter "the cited passage"). Final Office Action, page 11. The cited passage, however, does not disclose or suggest the claimed managed server, which as explained above, both serves a web page comprising a source call to an object file and receives a request for the object file. The cited passage merely

10/037,683

Pre-Appeal Brief Request for Review

discusses the relationship between a computer 80 at an affiliate web site 790 and a server 90 at a content serving web site 70. Pettersen, column 8, lines 47-50. In describing this relationship, the cited passage does not state that the server 90 serves the internal web page 86; it states that the server 90 serves an advertisement (i.e., retrieved output 98) for insertion into the internal web page 86. See Pettersen, column 8, lines 61-63. As suggested by the word “internal” and explained elsewhere in Pettersen, though not explicitly stated in the cited passage, the internal web page 86 is local to the client computer 80 at the affiliate website 790. See Pettersen, column 10, lines 20-22. The cited passage does not support the Examiner’s contention that Pettersen teaches a single server that both serves a web page comprising a source call to an object file and receives a request for the object file. Thus, the Examiner’s first argument is wrong.

The Examiner’s second argument, that it would have been obvious to modify Pettersen in view of Chen, is flawed for reasons that were explained in the Response filed on January 19, 2007. Specifically, on pages 12-14, Appellants explained that the Examiner has failed to identify a convincing rationale why it would have been obvious to combine Pettersen with Chen, and on pages 14-15, Appellants explained that Pettersen teaches away from such a combination. Notably, in the Final Office Action, the Examiner completely failed to address either of these arguments, choosing instead to merely reiterate the same conclusory obviousness analysis from the previous office action. Mere speculation by the Examiner is inadequate – the rationale must be supported by objected evidence.

Flaws in the Rejection of Independent Claim 37

The rejections of the other claims are flawed for similar reasons. As explained on page 10 of the previous Response, the cited references do not teach or suggest, alone or in hypothetical combination, “requesting data corresponding to the first embedded object from the managed server after receiving the frame from the managed server,” as recited by independent claim 37. (Emphasis added.) That is, in claim 37, data corresponding to the first embedded object is requested from the same server that provided the frame. In view of this missing feature, which is neither taught nor suggested by the cited references, regardless of whether they are considered alone or in hypothetical combination, Appellants respectfully request allowance of claim 37 and its dependent claims.

MAY 25 2007

10/037,683

Pre-Appeal Brief Request for Review

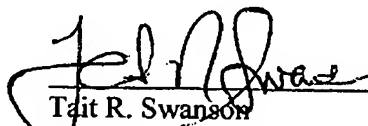
Flaws in the Rejection of Independent Claim 46

As explained on page 11 of the previous Response, the cited references do not teach or suggest, alone or in hypothetical combination, "first embedded object [that] is executable on a client remote from the server to request the dynamic data." (Emphasis added.) In contrast, the Pettersen reference teaches retrieving static, pre-stored advertisements and inserting the static advertisements in a web page dynamically. *See e.g.*, Pettersen, col. 7, ll. 11-13; col. 8, ll. 37-42; and col. 10, ll. 35-46. Thus, the Pettersen reference does not teach or suggest an embedded object that is executable to request dynamic data; it teaches dynamically inserting static data. Further, the Chen and Thurston references teach web pages that do not prompt a client computer to request additional data. Therefore, because these web pages do not request additional data, they clearly do not include embedded objects that are executable on a client to request dynamic data. Accordingly, the cited references, taken alone or in hypothetical combination, do not teach or suggest all of the features recited by independent claim 46.

Conclusion

In view of the abovementioned flaws in the present rejections, Appellants respectfully request that the panel allow the pending claims.

Respectfully submitted,

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